IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Revision Application No. 109 of 1997

Rajendra Pandurang Gaikwad — Petitioner
(Org.Accused no.1)
Vs.
State of Maharashtra — Respondent

With
Criminal Revision Application No.121 of 1997

Dnyaneshwar Nathuji Dhamade — Petitioner
(Org.Accused no.2)
Vs.
State of Maharashtra — Respondent

Ms.S.D.Khot with Ms.Ameeta Kuttikrishnan for petitioners.
Ms.R.M.Gadhvi, APP for State.

CORAM: B.H.MARLAPALLE,J.

January 22, 2007.

ORAL JUDGMENT :

1. By a common judgment and order dated 25th March 1996 the learned Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai was pleased to convict and sentence both the petitioners for the offences punishable under Section 392 read with Section 34 of IPC and the said order was challenged by filing two separate appeals i.e. Criminal Appeal Nos.50 and 53 of 1996. Both these Criminal Appeals came to be dismissed by the learned Addl. Sessions Judge at Mumbai on 21st April 1997 and hence these two

separate criminal revision applications by the original accused nos.1 and 2. They are being decided by a common judgment.

2. 13th October 1994 is the date of incident when some male passengers had entered a ladies' compartment of a local train which was going to Mumbai V.T. at about 11 a.m. and the accused also entered the said compartment. These male passengers having realised that they have entered a wrong compartment were trying to get down and enter the general compartment but they were not allowed and on the contrary some amount of money was extorted from them or from their person either by assaulting them or under the intimidation of such assault. When the train was reaching Sion railway station these passengers raised an alarm and, therefore, the railway police constable on duty entered the compartment and on the complaints made by some of these passengers the accused were taken to the police station. After filing of FIR etc. they were taken in custody and tried in C.C. No.8/RP/1995. The learned Metropolitan Magistrate convicted the accused for the offence punishable under Section 392 read with Section 34 of IPC and sentenced to suffer RI for

one year. They were also convicted for offence punishalble under Section 342 read with Section 34 of IPC and sentenced to suffer RI for one month. The substantive sentences imposed were directed to run concurrently. This order of conviction and sentence has been confirmed by the learned Addl. Sessions Judge on 21/4/1997 and while admitting these revision applications the accused were released on bail by furnishing fresh bonds.

3. There is no dispute that both the accused are the police constables and at the relevant time accused no.1 was part of Railway Police, VT and accused no.2 was attached to Railway Headquarters at Ghatkopar and they were not on duty. They were also in plain clothes. It was further alleged that when some of these passengers refused to give money the accused purportedly declared their identity and demanded the penal charges or fine charges for entering and travelling in a ladies' compartment (second class). It is further stated that accused charged some of the passengers for travelling ticketless. On completion of investigation they were charged and tried for the offences punishable under Sections 392 and 342 read with Section 34 of IPC.

The prosecution examined in all eight witnesses and out of them PW 1 Shankar Sawardekar, PW 3 Mahendra Mishra and PW 5 Ashok Bhosale were the victim passengers whereas PW 2 Ramesh Patil was a panch witness for the panchanama recorded for the seizure of certain cash and documents from the possession of the accused at Kurla railway police station. PW 4 Sanjay Kulkarni was a police constable who had escorted the accused and victims i.e. PWs 1, 3 and 5 to Kurla railway police station for the purpose of taking necessary action against the accused. PW 6 Dr. Vidya Mahale was examined to prove the injuries sustained by PWs 1, 3 and 5 in the assault unleashed by the accused. PW 7 was PSI Shri Surve who had recorded the FIR and PW 8 was Police Inspector Bajpei who had conducted the investigation. The learned Metropolitan Magistrate on assessment of the evidence placed by the prosecution held that evidence of PW 1, PW 3 and PW 5 was corroborated by the depositions of PW 4, PW 7 and PW 8 in addition to the injury certificates proved by PW 6.

4. The trial Court considered the meaning of "robbery" as defined under Section 390 of IPC and the definition of "wrongful confinement" under Section

340 of IPC.

5. PW 1 had identified both the accused before the Court to be the same persons who had demanded money when he was trying to get down from the ladies' compartment so as to enter a general compartment. In the compartment there were about 25 male passengers and about 5 to 6 ladies passengers. The accused started telling the male passengers that they had entered the wrong compartment and, therefore, were liable to pay a fine of Rs.500/- each failing which they would be taken to superior police officers. Both the accused demanded money from PW 1 and he stated that he wanted to get down at Bhandup railway station and for entering into the ladies' compartment inadvertently he be excused. When the train halted at Bhandup railway station he wanted to change the compartment but was not allowed by both the accused. The accused did not allow the passengers to stand up and were forced to confine to the seats. When the passengers attempted to stand to get down, they were assaulted by the accused. Whatever was the money available in his pocket was forcibly taken out by the accused. The witness specifically stated that accused no.2, who was present before the trial Court,

had slapped him on his back to make him sit down and not to leave the train. He was forced to pay money to accused no.1 and he paid Rs.50/-. The accused then searched the pockets of the clothes worn by 4-5 male passengers and took out the money that was available. In the cross-examination the witness only stated that he did not remember whether his statement was recorded at Dadar railway police station or Kurla railway police station. He also reiterated that each of the passenger was called upon to pay a penalty of Rs.500/- by the accused as they were travelling in a ladies' compartment. He also stated that accused no.2 had beaten once by means of his palm and hand on his back and he had paid Rs.50/-. Almost similar is the story of PW Nos.3 and 5. PW 3, though he could not identify the accused before the Court, reiterated that two constables which were taken by PW 4 to the Dadar Railway Police Station had demanded money from him and cash of Rs.227/- was found with accused no.1 and cash of Rs.255.75 was found with accused no.2 when they were searched at the police station. PW 5 also met the same treatment. He was not allowed to get down to change the compartment and was forced to confine to his seat till Sion railway station on the fateful day. He stated that when he first saw the

accused, he felt that they were the robbers or looters and was terribly frightened on that count. He also stated that he had not seen the accused at any time prior to the incident and was not able to say whether the accused were the very same persons who had assaulted the passengers on the fateful day. Notwithstanding his testimony, if we consider the testimony of PW 4, PW 7 and PW 8 and as considered by both the Courts below, it is undoubtedly true that the accused while travelling in the local train going to VT at about 11 a.m. were in the ladies' compartment and when they saw that some male passengers were travelling in the same, they posed themselves as the police constables on duty and demanded penal charges from the male passengers. When these passengers refused to meet such demands, they were slapped, money was taken out from their pockets forcibly and they were not allowed to get down from the train so as to change the compartment, under threats of physical assault. Each one was told that a fine of Rs.500/- was required to be paid. This assessment of evidence done by both the Courts below was criticised by the learned counsel for the accused. As per her the evidence did not prove the complicity of the accused and one of the officers

i.e. PW 7 had a personal grudge against them and, therefore, he had concocted the whole incident. The defence was also that the money that was found from the person of the accused was their own and one of them was required to remit the electricity charges. All these submissions have been considered by both the Courts below and discarded. The currency notes that were recovered from the accused and which were separately kept in three packets tallied with the statements made by PW 1, PW 3 and PW 5 to the extent that these notes were taken from them under force of assault and also police action. As per the evidence of PW 6 the victim had some injuries which were noticed between 1.10 p.m. and 1.25 p.m. when they were taken by the Kurla railway police station to the police hospital.

6. The defence taken by the accused has been duly considered by both the Courts below and the testimony of PW 1, PW 3 and PW 5 has been corroborated by the evidence of PW 4, PW 7 and PW 8. The accused were undoubtedly robbing these passengers by tormenting them and by taking undue advantage of the fact that they were travelling in the ladies' compartment. PW 5 Shri Bhosale, who was resident of Beed district was

on a casual visit to Mumbai and stated that when he was in the ladies' compartment two persons caught hold of his shirt and prevented him from alighting and pushed him in the corner of that compartment and one of them removed by force cash of Rs.95/- which he was then carrying on his person. This evidence went unchallenged in the cross-examination and in the cross-examination this witness confirmed that the persons who were robbing looked like the two accused who were present before the Court. In any case the accused have been identified by PW 1 beyond any doubt and PW 4 was the constable who entered the compartment when the train had slowed down on hearing commotion in the said compartment and he was able to identify the accused. The accused along with the complainants were taken initially to the Dadar railway police station and from there to the Kurla railway police station. There was sufficient time for PW 1 and PW 4 to remember and identify the accused.

7. All these three victims were not from the police department and even as per the defence of the accused they did not have any grudge against them. They happened to be the passengers in the local train

and travelling in second class ladies' compartment which they were not supposed to enter. The accused seeing this wanted to exploit the situation so as to extract the money under the garb that each of the male passengers was required to pay a fine of Rs.500/-. This has been clearly proved by the prosecution and in addition it has been further proved that none of the passengers who were trying to get down and change the compartment were allowed to do so and they were beaten up either for extortion of money or to force them to stay where they were till the train was reaching Sion railway station and due to the commotion of the passengers PW 4 along with other police constables entered the compartment. There is no reason why these three witnesses would make out some false stories against the police constables whom they did not know and the accused had to disclose that they were the police constables. The learned Addl. Sessions Judge re-appreciated the entire evidence and the reasoning set out by him to dismiss the appeals is based on the said evidence. No fault could be found with the reasoning set out by the learned Addl. Sessions Judge to confirm the order of conviction.

8. However, so far as the offence punishable under Section 342 of IPC is concerned, the sentence awarded by the trial Court and confirmed by the lower Appellate Court is RI for one month to both the accused. Having regards to the facts of this case viz. the victims were travelling by a local train and that the accused did not permit them to get down from the ladies' compartment so as to enter the general compartment, the order of sentence requires modification and the sentence of RI for one month could be substituted with fine only. Section 342 of IPC states that the accused could be punished with imprisonment or fine which may extend to Rs.1000/- or with both.

9. In the premises, the order of conviction passed by the trial Court and confirmed by the lower Appellate Court for the offences punishable under Sections 342 and 392 read with Section 34 of IPC is hereby confirmed. The order of sentence passed for the offence punishable under Section 392 of IPC does not call for any interference and the same is hereby confirmed. However, for the offence punishable under Section 342 of IPC, the order of sentence is modified

and it is directed that the accused shall pay by way of fine an amount of Rs.1000/- each in default SI for three months. Save and except this modification, revision applications are hereby dismissed. The petitioners - accused shall surrender to undergo the sentence for the offence punishable under Section 392 read with Section 34 of IPC.

(B.H